Supreme Court, U.S.
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No.

# IN THE
# Supreme Court of the United States

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LTC DONALD SULLIVAN and
SP4 JEFFREY S. SULLIVAN,
Petitioners, Pro Se

V

UNITED STATES OF AMERICA,
HONORABLE GEORGE W. BUSH, President, HONORABLE JOEL HEFLEY, Chairman, House Committee on Official Conduct, HONORABLE HENRY HYDE, Chairman, House Committee on International Affairs, JOHN BARGO, Chief-of-Staff, House Committee on Official Conduct, and 535 John Does,
Respondents

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On Petition for Writ of Certiorari
To The United States Court of Appeals For the Fourth Circuit

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## PETITION FOR WRIT OF CERTIORARI

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LTC Donald Sullivan and SP4 Jeffrey S. Sullivan
PO Box 3061
Wilmington, NC 28406
910-617-2559

## Questions Presented For Review

Whether or not, under federal or State statute and law, the Respondents have violated federal and/or State constitutional or statutory law?

Whether or not, under federal constitutional law, the President can become the "Commander in Chief of the Army and Navy, and the militias of the several States," without the legislative act of Congress?

Whether or not, under federal constitutional law, the Executive has authority to unilaterally engage a sovereign, foreign power on foreign soil with no declaration of war by the Congress and while not in the act of providing for the domestic defense (War Powers Resolution)?

Whether or not, under federal or state constitutional law, the United States may commit the states' militias into service on foreign soil, not in the act of repelling a "foreign invader", under the ruse of the "National Guard of the United States" (National Defense Act of 1916, as amended in 1933)?

Whether or not, under federal constitutional or statutory law, there is a "political question" in this matter which overrides constitutional mandate?

Whether or not, under federal constitutional or statutory law, the Petitioners' have Standing?

Whether or not, under federal constitutional or statutory law, the matters of Petitioners' Complaint are moot?

Whether or not, under federal constitutional or statutory law, Petitioners' Complaint was ripe for hearing by the Court of original jurisdiction?

Whether or not, under federal constitutional law, this matter is one of Article III Original Jurisdiction for the Supreme Court of the ~~United States because of the nature~~ of the constitutional adjudication required and the actions of the United States Court for ~~the Eastern District of North Carolina and~~ the United States Court of Appeals for the Fourth Circuit?

Whether or not, under federal constitutional or statutory law, a citizen any longer possesses that right for "petition for redress of grievances" as guaranteed and protected by the First Amendment to the Constitution?

Whether or not the United States Constitution is applicable or has become obsolete and anachronistic, as proposed by the Respondents?

Whether or not, under federal constitutional and statutory law, the Respondents should be held accountable for their individual and professional violations of constitutional or statutory law.

## List of Parties

All Parties do not appear in the caption of the case on the cover page. A full list of the Parties in the proceeding in the court whose judgment is the subject of this petition is as follows:

**Petitioners**: ~~Lieutenant~~ Colonel Donald Sullivan
Specialist Four Jeffrey S. Sullivan

**Respondents**: United States of America; Honorable George W. Bush, President; Honorable Joel Hefley, Chairman, House Committe on Official Conduct; Honorable Henry Hyde, Chairman, House Committee on International Affairs; Mr. John Bargo, Chief-of-Staff, House Committee on International Affairs; Members of Congress: Senators Allard, Allen, Baucus, Bayh, Bennett, Biden, Bond, Breaux, Brownback, Bunning, Burns, Campbell, Cantwell, Carnahan, Carper, Cleland, Clinton, Cochran, Collins, Craig, Crapo, Daschle, DeWine, Dodd, Domenici, Dorgan, Edwards, Ensign, Enzi, Feinstein, Fitzgerald, Frist, Gramm, Grassley, Gregg, Hagel, Harkin, Hatch, Helms, Hollings, Hutchinson, Hutchison, Inhofe, Johnson, Kerry, Kohl, Kyl, Landrieu, Lieberman, Lincoln, Lott, Lugar, McCain, McConnell, Miller, Murkowski, Nelson (FL), Nelson (NE), Nickles, Reid, Roberts, Rockefeller, Santorum, Schumer, Sessions, Shelby, Smith (NH), Smith (OR), Snowe, Specter, Stevens, Thomas, Thompson, Thurmond, Torricelli, Voinivich and Warner; Representatives Ackerman, Aderholt, Akin, Andrews, Armey, Bachus, Baker, Ballenger, Barcia, Barr, Bartlett, Barton, Bass, Bentsen, Bereuter, Berkley, Berman, Berry, Biggert, Bilirakis, Bishop, Blagojevich, Blunt, Boehlert, Boehner, Bonilla, Bono, Boozman, Borski, Boswell, Boucher, Boyd, Brady (TX), Brown (SC), Bryant, Burr, Burton, Buyer, Callahan, Calvert, Camp, Cannon, Cantor, Capito, Carson, Castle, Chabot, Chambliss,

Clement, Coble, Collins, Combest, Cooksey, Cox, Cramer, Crane, Crenshaw, Crowley, Cubin, Culberson, Cunningham, Davis (FL), Davis (Jo Ann), Davis (Tom), Deal, DeLay, DeMint, Deutsch, Diaz-Balart, Dicks, Dooley, Doolittle, Dreier, Dunn, Edwards, Ehlers, Ehrlich, Emerson, Engel, English, Etheridge, Everett, Ferguson, Flake, Fletcher, Foley, Forbes, Ford, Fossella, Frelinghuysen, Frost, Gallegly, Ganske, Gekas, Gephardt, Gibbons, Gilchrest, Gillmor, Gilman, Goode, Goodlatte, Gordon, Goss, Graham, Granger, Graves, Green (TX), Green (WI), Greenwood, Grucci, Gutknecht, Hall (TX), Hansen, Harman, Hart, Hastert, Hastings (WA), Hayes, Hayworth, Herger, Hill, Hilleary, Hobson, Hoeffel, Hoekstra, Holden, Horn, Hoyer, Hulshof, Hunter, Isakson, Israel, Issa, Istook, Jefferson, Jenkins, John, Johnson (CT), Johnson (IL), Johnson (Sam), Jones (NC), Kanjorski, Keller, Kelly, Kennedy (MN), Kennedy (RI), Kerns, Kind (WI), King (NY), Kingston, Kirk, Knollenberg, Kolbe, LaHood, Lampson, Lantos, Latham, LaTourette, Lewis (CA), Lewis (KY), Linder, LoBiondo, Lowey, Lucas (KY), Lucas (OK, Luther, Lynch, Maloney (NY), Manzullo, Markey, Mascara, Matheson, McCarthy (NY), McCrery, McHugh, McInnis, McIntyre, McKeon, McNulty, Meehan, Mica, Miller (Dan), Miller(Gary), Miller (Jeff), Moore, Moran (KS), Murtha, Myrick, Nethercutt, Ney, Northrup, Norwood, Nussle, Osborne, Ose, Otter, Oxley, Pascrell, Pence, Peterson (MN), Peterson (PA), Petri, Phelps, Pickering, Pitts, Platts, Pombo, Pomeroy, Portman, Pryce (OH), Putnam, Quinn, Radanovich, Ramstad, Regula, Rehberg, Reynolds, Riley, Roemer, Rogers (KY), Rogers (MI), Rohrabacher, Ros-Leitinen, Ross, Rothman, Royce, Ryan (WI), Ryun (KS), Sandlin, Saxton, Schaffer, Schiff, Schrock, Sensenbrenner, Sessions, Shadegg, Shaw, Shays, Sherman, Sherwood, Shimkus, Shows, Shuster, Simmons, Simpson, Skeen, Skelton, Smith (MI), Smith (MI), Smith (TX), Smith (WA), Souder, Spratt, Stearns, Stenholm, Sullivan, Sununu, Sweeney, Tancredo, Tanner, Tauscher, Tauzin, Taylor (MS), Taylor (NC), Terry, Thomas, Thornberry, Thune, Thurman, Tiahrt, Tiberi, Toomey, Turner, Upton, Vitter, Walden, Walsh, Wamp, Watkins

(OK), Watts (OK), Waxman, Weiner, Weldon (FL), Weldon (PA), Weller, Wexler, Whitfield, Wicker, Wilson (NM), Wilson (SC), Wolf, Wynn, Young (AK), Young (FL).

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50 U.S.C. 1543(a) - War Powers Resolution of 1973
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Fred Volday, "he Progress Report", June 23, 2003.

Senator Mark Dayton, "On the Senate Giving Up Its Constitutional Responsibility to Declare War", March 13, 2003, address to the Senate.
Congressman Jesse Jackson, Jr., "The President Must Have Congressional War Resolution Before Starting War", February 13, 2003.
Congressman Helen Chenoweth, "Our Illegal War", April 26, 1999.
Holy Bible, King James Version, from Mathew Ch. 7, Verse 6.
United States Constitution: Article I, Section 8, Cls. 11, 12, 15; Article II, Section 2; Article IV, Section 4; Article V; and Amendments, Article 1.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgments below.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth District appears at Appendix B to the petition and is unpublished.

The opinion of the United States District Court for the Eastern District of North Carolina appears at Appendix A and is unpublished.

## JURISDICTION

The date on which the United States Court of Appeals rendered judgment in this case was September 25, 2003. No Petition for rehearing was timely filed in this case.

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1) and Article III, United States Constitution.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

**United States Constitution, Article I, Section 8, cl. 11:** Congress shall have Power...To declare war...;

**United States Constitution, Article I, Section 8, cl. 12:** Congress shall have Power...To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two years;

**United States Constitution, Article I, Section 8, cl. 15:** Congress shall have Power...To provide for the calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

**United States Constitution, Article II, Section 2:** The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States;

**United States Constitution, Article III, Section 2:** The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;

**United States Constitution, Article IV, Section 4:** The United States shall guarantee to every State in this Union a Republican Form of Government. and shall protect each of them against Invasion; –

**United States Constitution, Article V:** The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose

Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress;

**Amendments to the United States Constitution, Article I:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

## STATEMENT OF THE CASE

Now come Petitioners, Lieutenant Colonel Donald Sullivan, as a citizen and retired member of the United States Air Force Reserve, and Specialist Four Jeffrey S. Sullivan, a citizen and member of the North Carolina National Guard, before this Honorable Court with their Petition for a Writ of Certiorari to have heard arguments in support of the reversal of an Order for dismissal from the United States District Court for the Eastern District of North Carolina, CA-03-39-7-F, dated and filed April 15, 2003, by the Honorable Judge James C. Fox, and affirmed by the United States Court of Appeals for the Fourth Circuit, File No. 03-1611, on September 25, 2003, by the Honorable Circuit Judges Widener and Gregory, and Senior Judge Hamilton. It appears said pre-trial order to allow Defendants' Motion to Dismiss, without oral arguments, was executed on issues of justiciability: Political question, standing, ripeness and mootness, not the constitutionality of the President's actions or the merits of Petitioners' complaint. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1), and United States Constitution, Art. III, Section 2.

As a practical matter, it appears this case, both for its having been dismissed in a pre-trial ruling by the Federal District Court and the Federal Court of Appeals and because it raises important questions of federal law which have not been, but should be, settled by this Court, may be viewed as in the Article III Original Jurisdiction of the United States Supreme Court, and original arguments heard, thus do Petitioners so request.

Petitioners' original complaint, though filed hours before the actual "declaration" of war and commencement of hostilities by the President on March 18, 2003, was filed pursuant to written and telephonic entreaties by Petitioner Lt. Colonel Sullivan to Respondents Hefley and Bargo, shown in Exhibit 4 of the Original Complaint, in their official capacities as chairman and Chief-of-Staff

of the House Committee on Official Conduct, using his First Amendment right "to petition for redress of Grievances", to prevent non-defensive and pre-emptive actions by the United States against the sovereign nation of Iraq without proper representation by the Congress as required by Article I, Section 8, of the Constitution,. Lt. Colonel Sullivan's petitions were directed at preserving the integrity of the United States Constitution as required by his oath of commissioning, and, by using the Iraqi question then developing under the authority of House Joint Resolution 114 (PL 107-243), "To authorize the use of United States Armed Forces against Iraq", as a precedent example, to once and for all eliminate the United States' propensity for cavalierly entering into armed invasions of sovereign governments without the representation of a direct issue vote by the peoples' representatives in the Congress, upon information and belief an act repeated over 200 times since 1945.

As the Petitioners stated to the Court at the Hearing for a TRO on March 20, 2003, "The Plaintiffs are disinterested in the Iraq conflict, per se." Their interest was and is the prevention of any further insertions of troops by the United States into any foreign nation for any reason or policy, other than the repelling of a foreign invasion, without a declaration of war by the Congress, and the unquestioned support by the American people, via their representation in that Congress, for War. (See Appendix D, Violating the Constitution with an Illegal War, by Honorable Ron Paul, October 3, 2002)

Further, the petitioners argued the intent of HJR 114 was to tie any acts of war to appropriate sanctions of the United Nations, maintaining any participation in an invasion of Iraq would require a congressional declaration of war, and to act unilaterally would have the Executive in collision with the Legislative. The same argument was raised by *Doe, et al v Bush, et al*, 323 F.3d (March 13, 2003), but was disregarded by the Court stating, "For various reasons, this issue is not fit now for judicial review. For example, should there be an attack, Congress may take some action immediately."

Petitioners, unaware of the *Doe* case, filed their Complaint March 18, 2003, the very day the Respondent individually declared the invasion of Iraq. At that time the Congress, though miffed, took no action to prevent this offensive decision, having been caught in their own trap with the very real and present need to "support our troops" now before them,, thus proving their culpability and the unconstitutional collusion between the Executive and the Legislative to unconstitutionally invade Iraq.

The Petitioners were dismissed because of "justiciability" issues and "mootness" on April 15, 2003, after the hostilities were prematurely declared over. The Defendants' 33-page Motion to Dismiss had been filed within 48 hours after Plaintiffs' original Complaint. An argument can be appropriately made based upon these events and others in this case, that there is not only collusion between the Legislative and Executive branches, but also between the Executive and Judicial. One might even conclude, given the keen awareness and sensitivity of the Attorney General in the extant case, as witnessed by the response time, Respondent Bush's decision to move forward as suddenly as he did might have been directly related to the timing of these matters. However, Defendant Bush's announcement that hostilities were over was not "ripe", since we have been involved in what television newscasterTom Brokaw referred to in an interview with talk show host David Letterman as "War II, which is extremely dangerous for all those in Iraq", and continue to lose our sons and daughters at an alarming rate. One might well ask, "And for what?"

Petitioner Specialist Four Jeffrey S. Sullivan, a member of the North Carolina National Guard, had been activated to the National Guard of the United States in January, 2003, in support of the intended invasion of Iraq and the "War on Terrorism" by the President, and is currently serving in Bagram, Afghanistan, with the 1st/130th Aviation Battalion. The Court may recall, Afghanistan is a "hostile" theater, where many of our troops are being killed and wounded each week. The most notable recent loss being the

downing of an Army helicopter from Specialist Four Sullivan's base with six killed. Further, those National Guard Troops in Afghanistan are merely place-holders such that other members of the Armed Forces of the United States could be freed up to serve in the Iraqi theater.

The "War" continues to this day, as occupation is not only a part of war, but oftentimes even more dangerous. The ruling of "mootness" by the lower court is baseless, and beyond the context of plaintiffs' action. The objectives of the Iraqi mission were fraudulent from the beginning. We must accept that Respondent Bush believed in what he was doing, for to think otherwise is unthinkable; but, at the time of the invasion, the Congress most likely did not. The requirement for a declaration of war would most probably have prevented this debacle and the ensuing loss of life, resources and national credibility. No one trusts the United States any longer. Our record speaks for itself.

Prior to our intervention in Iraq in 1990, King Hussein, an ally at the time, had asked the United States to define its response should he invade Kuwait. He was informed officially there would be no response as long as American interests were not threatened. President Bush, the Elder, attacked Iraq anyway, without Congressional approval. Again, on the eve of this most recent attack, the Executive was given assurances King Hussein would absolutely comply with all United Nations resolutions and United States requirements save the regime change. Respondent Bush, the son, was not satisfied and invaded Iraq anyway. This apparent result of the unconstitutional delegation of authority by the Congress, whether intended or not, must be addressed by the Judicial to prevent similar catastrophes from ever happening again due to total power being transferred to any one individual in the Executive branch, including the President of the United States.

For this nation, and the federal Judiciary, to continue to

allow the office of the President of the United States to act without the specific sanctions of the Congress in areas where only the Congress has the authority to act, to sanction such acts even in the face of there being no threat to the United States, no invasion of the United States, and no vital national security or domestic defense interests being served, where citizens of foreign nations are needlessly and carelessly slaughtered in the name of peace, and where the international and domestic credibility of the United States is destroyed, is not only unconscionable, it is a shirking of their responsibility as defined in the Constitution.

"In some ways, the claims made by plaintiffs here parallel those made in *Clinton* [*Clinton v. City of New York* (524 U.S. 452)]: That the Constitution vested power in the legislative branch as a necessary check on the power of the executive branch, and that Congress is not free to upset the careful balance by giving power to the executive. See 524 U.S. at 452 (Kennedy, J., concurring) ("That a congressional cession of power is voluntary does not make it innocuous....Abdication of responsibility is not part of the congressional design.") cf. *New York v. United States*, 505 U.S. 144, 182, 120 L. Ed. 2d 120, 112 S. Ct. 2408 (1992) ("The Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment.")." (*Doe, et al, v. Bush*, et al, *supra*)

Having proceeded with no declaration of war, and without the requisite support of the United Nations, as referenced in HJR 114's preamble and by legislative history, Respondent Bush has placed "all participants under the authority of the International Criminal Court, recently seated but boycotted by the United States, which stated purpose is the trial and punishment of tyrants and other violators of international law, i.e., the dictates of the United Nations" (Count I, Original Complaint). Although the Executive, through international bribes and concessions, is attempting to "buy-off" member nations of the International Crime Commission (ICC)

to exempt Americans from the tribunals of that body, it is at the same time establishing similar tribunals to bring to trial Iraqis and others who may be guilty of the same "war crimes". While the former action smacks of cover-up, the latter action most certainly is disingenuous and will cause the "buy-off" attempts to suffer and fail. It appears the United States would have been better served to let the ICC investigate and bring to justice those who participated in the 9/11 disaster, rather than attempting unilaterally to police the world under the pretext of its "War on Terrorism".

Of course, any discussion of this subject of "undeclared war" begs the question of "What about the War Powers Resolution of 1973 [50 U.S.C.S. 1543(a)]?" It must be, of course, repugnant to the Constitutional Powers of Congress, which cannot be delegated to any other branch. The War Powers Resolution, vetoed by President Nixon because it was repugnant to the Constitution, is an overt attempt to abrogate the legal authority of the people, represented by that Constitution. "But this 'act' was illegal because it was passed by 'Joint Resolution' rather than by the individual chambers of Congress, and unconstitutionally delegates (legislative) power to the (executive) President." Fred Foldvary, *supra*) The Petitioners, therefore, include it by association in this pleading for certiorari, to have done with it once and for all, before it "turns and rends us" (Matt. 7:6).

Although Petitioners' original Complaint was primarily about the Congress' avowed disregard for the Constitution as stated on the record in meetings pursuant to the vote on House Joint Resolution (HJR) 114, the passage of time has illuminated even more such fundamental issues. Each of these Respondents has violated law. Respondents Hefley, Hyde and Bargo were culpable by their denying Petitioner Sullivan his constitutionally guaranteed right to petition for redress of grievance and to expect a responsible answer, most certainly on an issue of the importance of a declaration of war. Petitioner's extraordinary standing to expect such an answer is explained herein. Respondent Members of

Congress, who swore in their oaths of office to "support and defend the Constitution of the United States against all enemies, foreign and domestic and bear true faith and allegiance to the same", have individually violated the specific sections of the Constitution which provide for only the Congress to have the power to declare war by supporting and voting for HJR 114. Some, at the same time acknowledging the resolution to be outside their constitutional authority, were, upon information and belief, stating on the record that the Constitution has been overwhelmed by events and by time, and the declaration of war is no longer required. To wit,

> "There are things in the Constitution that have been overtaken by events and by time. Declaration of War is one of them...There are things no longer relevant to a modern society...Why declare War if you don't have to?...We are saying to the President, use your judgment...So, to demand that we declare War is to strengthen something to death. You have got a hammerlock on this situation; and it is not called for, inappropriate, anachronistic. It isn't done anymore." (Respondent Henry Hyde, elected defender of the Constitution in his comments to the International Affairs Committee, October 3, 2002).

Ironically, some of these same congressmen voted down a declaration of war resolution offered by Congressman Ron Paul in the same House Committee on International Affairs meeting where HJR 114 was approved; so this violation of constitutional law was not done in ignorance (See Appendix D).

Due to that original act (HJR 114), which we have seen is repugnant to the Constitution, and, apparently, due to peer pressure and emotional uncertainty with regards to "supporting our troops" once they were in harm's way, subsequently and unfortunately, these same representatives of the people were drawn into unpopular war funding allocations and took no actions to remedy their own malfeasance. At that point, the ship had sailed, and the Congress

was unwilling to put on the brakes. These are career-threatening and career-shattering times. They easily overlooked that their solemn oath is not to a person, an institution, a country, a government, nor to a president, but to the Constitution of the United States, without which there can be no United States.

"The Constitution says simply, clearly, emphatically: Congress shall declare war. Only Congress. No one else. Not the President. Not the judiciary. Not the military. Only Congress. 100 Senators and 435 Representatives elected by, and acting for, the people of the United States." (Senator Mark Dayton, On the Senate Giving Up Its Constitutional Responsibility to Declare War, March 13, 2003, Appendix E) Yet, "A reporter recently stated to President Bush that it appeared inevitable that the nation was headed toward war with Iraq. The President responded, 'That's not for you to decide. That's for me to decide.'" (Congressman Jesse Jackson, Jr., *The President Must Have Congressional War Resolution Before Starting War*, February 13, 2003)

This reluctance to actually stand up and protect the Constitution by those who are entrusted with that awesome responsibility to "support and defend" it, as demonstrated by the Congress in this matter before the Court, is nowhere better illustrated than in the recent experience of Petitioner Lt. Colonel Sullivan himself, during a brief conversation with an experienced member of the armed Forces of the United States, in uniform, about a related subject at a National Guard Armory. In this discussion, the issue of constitutionality came up as an aside. The soldier asked for a constitutional reference for Petitioner Lt. Colonel Sullivan's comment pertinent to foreign deployment of troops, especially the National Guard of North Carolina. Petitioner Lt. Colonel Sullivan offered him the very Constitution he had sworn to defend. Immediately after reading the applicable section, the soldier informed Petitioner Lt. Colonel Sullivan the police would be called, and he would be arrested, if he did not leave the premises immediately. Our troops are so well trained, they fear any

knowledge of the reason for their profession, lest it interfere with their objective, whether that objective be in keeping with their solemn oath, or not. It seems the God and the Constitution of our Founders is no longer welcomed by, and are being summarily eliminated from, our government.

Petitioner President Bush, as chief executive officer for the United States, did violate the intent of the Constitution by illegally assuming the powers of Commander-in-Chief, by illegally calling the militias of the several states into the service of the United States, and by ordering the invasion of the sovereign states of Iraq and Afghanistan, or "declaring" war, without such authority having been allocated by the only branch of the government with legal power to grant it. Or, as held in *Hamdi v Rumsfeld* (216 F.3d 450, January 8, 2003), "The war powers thus invest: 'the President, as Commander in Chief, with the power to wage war **which Congress has declared**,...'". In this matter before the Court, as in those many similar matters herein referenced, Congress declared no war which a President could legally wage.

"The War Powers Clause of the United States Constitution provides Congress with the power to "declare war...." (U.S. Constitution, Art. I, Section 8, cl.11). Congress' power to declare war works in conjunction with the authority granted to the president under the Constitution to act as "Commander in Chief of the Army and the Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States" (U.S. Constitution, Art. I, Section 2, cl. 1)" (*Campbell, et al, v. Clinton*, 52 F. Supp. 2d 34). Unfortunately for the President in this matter, and many others before it, this latter power is contingent upon the Congress voting to call the "Militia of the several States...into the actual Service of the United States". This can only be done through a declaration of war, or other specific act so doing, by the Congress, which has the power "To provide for calling forth the Militia....", whether it be the "States Militia" or the United States "Militia".

"The role of the President as commander-in-chief is one of the few executive powers enumerated by the Constitution" (Doe, et al, v. Bush, et al, supra) is true as far as it goes. This power cannot become effective unless and until the Congress validates this power by law, or by declaration of war, even by the simplest interpretation of the intent and punctuation of Art. II, Section II, although some interpretations would say different. Stated simply, the phrase, "and the militia of the several States", is a parenthetical phrase the deletion of which from the sentence does not change the intent of that sentence one iota. Art. II, Section 2, would then read, "The President shall be the Commander in Chief of the Army and Navy of the United States **when called into the service of the United States**" (emphasis added). Only the Congress has the authority to make war or warriors.

According to the Constitution, and until the Congress declares war, by any reasonable interpretation of the words and the careful punctuation of the above mentioned "Militia clause", the President is merely the Chief Executive Officer unless and until the Congress adds the awesome power of the United States armed forces and the "Militias of the several States" to his authority by the act of that Congress to declare war. The reason for this aspect of the control of Congress, the peoples' representative in government, over the employment of the armed forces of the United States is because the States knew at the founding of this nation, "standing armies are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power" (Art. 1, Section 30, State Constitution of North Carolina). Hence, the directive only the Congress, representing "we the people", may declare war and call forth the militias of the several States.

Quoting Congressman Helen Chenoweth from her article, "Our Illegal War", at Appendix C regarding Art. II Section 2, of the United States Constitution,

"The text of the Constitution itself specifies, 'The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States....' In other words, 'Commander in Chief' describes a specific and limited role played by the President. Rather than Congress having a Commander in Chief before which it must prostrate itself, it has in the President an executive it may entrust with delegated war-making authority."

The Founders of this nation knew best the intent of this Constitution, stating as follows:

**George Washington**: "The Constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure." (1793)

"If, in the opinion of the people, the distribution of Constitutional powers be wrong, let it be corrected by Amendment in the way in which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed." (Farewell address of 1796)

**Thomas Jefferson**: "We have already given in example one effectual check to the dog of war by transferring the power of letting him loose from the Executive to the Legislative body...." (Letter to Madison, 1789)

"Considering that Congress alone is constitutionally vested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided." (Message to Congress, 1805)

"In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution." (1798) [Compare this context with Respondent Bush's comment regarding discussions on HJR 114, "Don't tie my hands." See Senator Mark Dayton March 13, 2003, speech to the Senate, "On the Senate Giving Up Its Constitutional Responsibility to Declare War" at Appendix E]

**Alexander Hamilton**: "The President is to be commander-in-chief of the army and navy of the United States...while that of the British king extends to the declaring of war and the raising and regulating of fleets and armies, all of which by the Constitution under consideration, would appertain to the legislature." (The Federalist, 69, 1788)

"It is the province and duty of the Executive to preserve to the Nation the blessings of peace. The Legislature alone can interrupt those blessings, by placing the Nation in a State of War."

**James Madison**: "...The power to declare war, including the power of judging the causes of war, is fully and exclusively vested in the legislature...the executive has no right, in any case, to decide the question, whether there is or is not cause for declaring war." (1793)

"The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war to the Legislature." (Letter to Jefferson, c. 1798)

[It is the] "fundamental doctrine of the Constitution that the power to declare war is fully and exclusively vested in the legislature." (1793)

**William Patterson** (Framer of the Constitution and Justice of the United States Supreme Court): "...It is the exclusive province of congress to change a state of peace into a state of war." (United States v. Smith, 1806)

**James Wilson** (Framer of the Constitution and ratifier): "This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large...." (Address to the Pennsylvania ratifying convention, 1787)

Fred Foldary, *supra*, asks, "May the President start a war without a declaration of war?" He goes on to answer, generally, that the authors of the Constitution wanted to avoid this eventuality:

> By requiring Congress, not the President, to initiate war, the authors wanted to assure broad support for any war, since Congress is more widely representative of the people than the President. Yet, since World War II, the United States has fought many wars, none having the luxury of a declaration of war. The Excuse in Korea was that this was a United Nations war, and the United States was participating under the United Nations. But the power to 'declare war' means the United States may not engage in a war unless [and until] the Congress implicitly declares that the United States is at war. If a power is allocated to the Congress, it may not be legislated to the President."

"It may not be legislated to the President" without amending the Constitution, and certainly cannot be delegated to a foreign power such as the United Nations.

The excuse in Vietnam, another "undeclared war", was the Gulf of Tonkin resolution which merely funded the "actions" in country. This same "Gulf of Tonkin Incident" has, 30 years later, been proven to have been merely a ruse to get public opinion behind this mostly commercial enterprise. Not the first ruse to get us into war by a long shot, and certainly not the last. Then there were Cambodia, Laos, Grenada, Kosovo, Somalia, Panama, Liberia, Libya, Afghanistan I, Iraq I, Afghanistan II, now Iraq II, and many, many more, "all undeclared wars" which were unconstitutional. Millions killed and wounded, and, in the final analysis, for no good purpose whatsoever. The Petitioners' intent is that this mistake never be allowed to happen again.

Foldary, goes on to say,

> "The declaration of war is important because a state of war transforms the country. The entire country is at risk of being attacked, and the war becomes top priority for everyone, whether they like it or not. Because this is so serious, an explicit and specific declaration makes it very clear that this is what the Congress, on behalf of the people, intends. By merely passing a resolution and providing funds [to support our troops], Congress is going along with a Presidential war rather than taking responsibility for starting a war."

By contrast, Respondent Bush encouraged the citizens of the United States to continue with "business as usual".

Likewise, the Congress is empowered "To raise and support Armies, but no Appropriation of Money to that use shall be for a longer Term than two years" (Art. 1, Section 12, United States Constitution). Obviously, the Founders were opposed to a "standing" Army for periods longer than two years, except in a national emergency such as a War declared by the Congress, precisely because of their fear of that Army being "destructive to

liberty." Hence, the undeniable fact the Executive, through compliant congressional legislation, has kept the United States in a continuous state of emergency for at least 155 years to justify keeping a "standing Army", in obvious disregard of constitutional authority.

However, even when War is declared, according to any straightforward interpretation of the United States Constitution as written, unabridged and unabrogated by law, the President cannot employ said "Militia of the several States" in any missions other than those which "...execute the Laws of the Union, suppress insurrections, and repel invasions" (Art. I, Section 8, cl. 15). Therefore, the fact Petitioner Specialist Four Sullivan is currently serving in Bagram, Afghanistan, along with thousands of other members of the "Militias of the several States" serving in either Iraq or Afghanistan, flies in the face of not only the limited authority granted the President by the United States Constitution, but also that granted by many State constitutions, including that of North Carolina, Specialist Four Sullivan's home State, which he has sworn to support and defend and which states, "The Governor shall be the Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasions." (Art. 12, State of North Carolina Constitution) Again, we see the purpose of the Militia is solely homeland domestic defense, not pre-emptive projection of force to sovereign, foreign soil. This "projection" can only occur legally when the Militia is pursuing an invading foreign enemy. Thus, the very idea of the United States staging a pre-emptive strike, especially using the "Militias of the several States", is totally repugnant to the Constitution.

The Congress, exercising its authority under the "implied powers" of the "implementation clause" in Art. I, Section 8, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers", moved to circumvent the authority of the States with regards to their militias through the

passage and subsequent interpretation of the National Defense Act of June 3, 1916, 39 Stat.166, which provided, in part, "That the Army of the United States shall consist of the Regular Army, the Volunteer Army, the Officers' Reserve Corps, the Enlisted Reserve Corps, the **National Guard** while in the service of the United States, and such other land forces as are now or may hereafter be authorized by law (emphasis added)." This law was used to technically merge the several States' militias into the Army such that they lost all status as militiamen of the States, and therefore, allegiance to same, so that they could be used in conflicts outside the domain of the "militia clause", a law we now see is repugnant to the Constitution.

Further, this abrogation of the power of the States to have their own militia was strengthened by the Supreme Court in the *Selective Draft Law Cases*, 245 U.S. 366 (1918), and in *Cox v. Wood*, 247 U.S. 3 (1918), holding "the plenary power to raise armies was "not qualified or restricted by the provisions of the militia clause". Subsequently, to remedy certain "defects" in the National Defense Act, the Congress amended it in 1933, establishing the simultaneous enlistment of National Guard members, the militia of the several States, into what was called the "National Guard of the United States". The effect of this amendment was for members to be "relieved from duty in the National Guard of their respective States" so they could then be projected overseas, effectively amending the Constitution by the fiat of Congress and, thereby, denying the States any authority over their own militias, an act not only repugnant to the Constitution, but also one which disrespected what the Founders were trying to accomplish by the "militia clause", a separation of the armed forces of the States from that of the United States, except in matters of domestic defense. This is much the same thing as has been accomplished by the United Nations, and the North Atlantic Treaty Organization, in its employment of our troops in manners not approved by our own Congress. One need only to connect the dots to understand where we are headed if we do not return immediately

to the restrictions of the Constitution. Otherwise, we must see it condemned by our own leaders (See again Chenoweth at Appendix C). It would seem, in fact, that the United States Constitution is indeed in great peril of being rewritten, whether intentionally or not, either by the fiat of willing judicial and legislative branches, or by being wholly replaced with an all new document in Convention by its enemies due to its "anachronistic" imperatives.

While the need for a well-equipped and well-trained National Guard militia to provide domestic defense for the several States and nation is self-evident, the insidious development of that force into an offensive, imperialistic instrument of war must be reckoned with and controlled. Otherwise, it will be as President Theodore Roosevelt stated in his First Annual Message to Congress in 1901, "Our militia law is obsolete and worthless", but for a totally different reason than that espoused by him.

Further, by allowing Respondent Bush to unilaterally "call the Militia", in this case the National Guards of the several states, into service for an undeclared, unnecessary and nation-threatening war, the United States has unwittingly placed itself in a position where it cannot effectively comply with its duties under Art. 4, Section 4, of the United States Constitution which states, in part, "The United States shall guarantee the States...and protect each of them against Invasion." It is obvious, both from news reports as well as from comments from our military leaders, the United States has overextended its ability to protect any State of the Union, or the Union itself, from invasion by a foreign power. One must remember, when the Roman empire finally fell, two of the major failures at cause were: Rome had been overwhelmed by an influx of "strangers", and the Roman legions were far-flung and unable to defend the homeland. Further, by illegally drawing upon the Militias of the Several States to augment the missions he has given the armed forces of the United States, Respondent Bush has made it impossible for the State governors to protect their own constituents from either from invasion or the most basic of local

emergencies, as noted by leaders of the North Carolina National Guard in comments preceding the recent hurricane Isabel.

The fact is, this country has already been, and is being, invaded. There are millions of foreign nationals in this country today. The BICE estimates there are over 500,000 Mexican and Central and South American nationals in North Carolina right now, of which the greatest portion can rightfully be assumed to be illegally here. Should even a fraction of their number decide to rise up against us, we would be easy prey. Knowing the stated position of some of the more radical elements of this group to conduct *la Reconquista*, the reconquest of the southwestern States, to form the mythical home of the Aztecs, *Aztlan*, one foresees a real and present danger (See again Chenoweth at Appendix C). It would appear the colonization of the United States is well under way and should be complete within the next 20 years, given the rate of illegal immigration and the sustained birthrate and interbreeding of the colonists. While we wait, our future, our wealth, our jobs, our culture, our heritage, our identity and our nation are being forfeited. Even more cause for alarm is the fact the communist Chinese have a very serious presence in and around the Isthmus of Panama since they took over the Panama Canal from the Panamanians, in violation of the treaty under which we returned the Canal Zone to the citizens of Panama. This presence, in and of itself, constitutes a foreign invasion, especially under the auspices of the Monroe Doctrine; and, given the stated attitude of the Chinese government to destroy the power of the United States, nominally over the "Taiwan Question", this threat is very real, albeit mostly ignored by our government "solely for the faculty of making money" (Thomas Jefferson to the Virginia Assembly, 1794). All this, while our President takes the bulk of our military and illegally projects it overseas for his personal war without the authority of the people. It is undoubtedly within the realm of judicial authority and responsibility to address these issues before it is too late for all of us. We have survived over fifty years of disregard for the

Constitution's restrictions on war-making ability. We will not survive fifty more.

Reviewed separately, as the Supreme Court has previously done on certain of the above questions, these violations of law and abrogations of the Constitution may not be wholly threatening to its viability and, consequently, to the United States. However, taken as cumulative, the whole becomes greater than the sum of its parts, and the powers created fit perfectly in the hands of a dictator, a king or an oligarchy. This is where the United States stands today, even as it pretends to export its form of socialist democracy, something our Founders feared and abhorred, above which they chose one Constitutional Republic, Under God, and guaranteed "to every State in this Union a Republican Form of Government" (Art. IV, Section 4, United States Constitution).

The Congress has passed laws, including, but not limited to, HJR 114, the War Powers Resolution, the PATRIOT Act, and numerous funding measures in support of illegal wars, which serve only to abrogate the safeguards of the United States Constitution, under the guise of implementing the authority of that Constitution. The matter now before this Honorable Court was commenced upon the attitude of certain members of Congress, represented by the Respondent Members, that "the Constitution has been overwhelmed by events and by time." Having this philosophy is improper before the Constitution itself, which states it is only to be altered by amendment (Art. V, United States Constitution).

We must all understand the Constitution is merely a binding contract, a business arrangement, between and among the several States meant only to establish a United States of America, Inc, and to set for it rules of conduct and limits of authority, which establishment, rules and limits are subject to the authority of the stockholders of that corporation, the States. By the actions of the Executive and fiats of the Legislative in the matter before this Honorable Court, this contract has been disregarded, abrogated.

The only reasonable conclusion for these acts is that this Constitution, and, thus, the United States it served to create, are no longer viable creations, under law. This matter is being brought by the Petitioners for the sole intent and purpose of bringing this United States to order in this most critical realm of government, to declare and wage war, and to force it to abide by the terms of its contract, or, in the alternative, be dissolved due to its arrogance and disrespect in the manner prescribed in Paragraph Two of our Declaration of Independence. Our failure to perform in these matters will leave us with a United States which is disingenuous, lacking even the credibility of its own law, and which can survive only through the use of force, not only against any perceived foreign threat, but also against its own citizens.

Petitioner will now address the questions of justiciability (political question doctrine, standing, ripeness and mootness) raised by the Respondents in their Motion to Dismiss, by the District Court in its Order, and referenced by the Court of Appeals.

The issue of political question doctrine must be rejected explicitly since this Court has jurisdiction under Article III over all "Cases under, Law and Equity, arising under this Constitution". Courts have been traditionally "sparing in their reliance on the political question". This "Court has found a case nonjusticiable on the basis of the political question doctrine only twice" in the past 40 years (*Bush v. Doe, supra*). Albeit there is prominent on the surface of this case "a textually demonstrable constitutional commitment of the issue to a coordinate political department", as provided for by the United States Supreme Court, the heart of the issue is the illegal delegation and abandonment of strict constitutional authority by one branch and usurpation of that authority by another to the great harm of all, which acts, if ignored by the Judicial, will only be duplicated time and time again, based upon the already existing precedents for those acts and the justifications developed herein. Such duplication can only result in ultimate harm to this nation and its people.

Obviously, the Respondents claim "an unusual need for unquestioning adherence to a political decision already made" *(Baker v. Carr*, 369 U.S. 186); however, the Fourth Circuit Court of Appeals has rightly concluded, "We do not hold, of course, that any time a branch of the military asserts a national defense interest to justify its acts, the court must avert its eyes." (*Tiffany v. United States*, 931 F.2d 271) It would not be constitutionally appropriate, nor in the best interest of this nation, for the United States Supreme Court to "avert its eyes" and be silent in this matter.

While Respondents have stated in their original Motion to Dismiss in the Fourth District, "With regard to decisions to employ military troops, 'it is not the function of the Judiciary to entertain private litigation...which challenges the legality, the wisdom, or the propriety of the Commander-in-Chief in sending our armed forces abroad or to any particular region" (*Tiffany, supra*), Petitioners contend not only was the President not empowered to be the Commander-in Chief by the Congress or the Constitution, but also the collisions and collusions identified herein show the interests of the Petitioners, the public at large, and the Constitution were subverted by certain individuals in the prosecution of these conflicts. Further, the Supreme Court has also noted in *Campbell, et al, v. Clinton, supra*, "the political question doctrine does not apply to suits brought by *individuals* in their *personal* capacities (emphasis added)." (*Michel v. Anderson*, 304 U.S. App. D.C. 325, 14 F.3d, 14 F.3d 623, 628 (D.C. Cir. 1994)

As "standing" is an affirmative defense, Petitioners' do not plead standing herein, but offer evidence of their standing to the Court pertinent to Respondents counter-claims in the lower courts. Petitioners' standing, although shared in some regards, have certain significant differences and will be defended separately herein.

Petitioner Lt. Colonel Sullivan certainly has the standing "held in common by all members of the public, because of the

necessarily abstract nature of the injury all citizens share" (Schlesinger, et al, v. Reservists, 418 U.S. 208, 1974). He also recognizes that "public" standing does not alone support his request for constitutional adjudication in this Court. However, he also has actual and threatened concrete individual injury. To wit: Petitioner Lt. Colonel Sullivan was specifically denied his First Amendment right to petition the United States, in the person of the Respondents, for redress of grievances, in matters which most certainly were timely and most properly filed, and, potentially, pertinent to the survival of this nation as a constitutional republic. Further, he is threatened by the loss of a close family member, the only son of his only brother, in the person of Petitioner Specialist Four Sullivan, who has been placed in harm's way by the unconstitutional actions and inactions of the Respondents, and as a direct result of the failure of the Respondents to react constitutionally to Petitioner Lt. Colonel Sullivan's petitions for redress. These are particular and concrete injuries for which this Honorable Court has judicial remedy.

Petitioner Specialist Four Sullivan's standing is even more undeniable. He stands today on the soils of a foreign nation, under the orders of Respondent Bush in an "undeclared war", in absolute violation of the precepts of that very "Constitution of the United States and the State of North Carolina" which he has taken a solemn oath to defend. His petition to this Court is based solely upon that oath, which he takes very seriously. He is denied his rights to liberty and the pursuit of happiness, and stands in a hostile theater, surrounded by his enemies, where even his right to life is threatened. As the Ninth Circuit maintained in *Mottola v. Nixon*, 464 F.2d 178 (1972), "The legality of an order sending men to participate in an 'undeclared war' should be raised by someone to whom such an order has been directed." It is within the power and the authority of this Honorable Court to remedy said injuries to Petitioner Specialist Four Sullivan by a favorable ruling in this matter. For this Court "To deny standing to persons who are in fact injured simply because many others are also injured, would

mean that the most injurious and widespread Government actions could be questioned by nobody" *(United States v. SCRAP*, 412 U.S. 669, 687-688, as quoted in *Schlesinger, et al, v. Reservists*, supra). Even the Respondents, as quoted in *Campbell v. Clinton, supra*, admit, "Counsel for the President appears to have acknowledged that an *individual* alleging personal injury from the President's alleged failure to comply with the War Powers Clause or the War Powers Resolution, as for instance a service person who has been sent to carry out the air strikes against the Federal Republic of Yugoslavia, would have standing to raise these claims."

The Respondents claim in their "informal Brief of the Appellees" to the United States Court of Appeals for the Fourth Circuit that "Even if plaintiffs could establish standing, their claim is now moot. During the course of this litigation, the United States has invaded Iraq and defeated the Iraqi Army...and the President has declared that major combat operations in Iraq have ended." Or, put another way, "Why prosecute for murder. The man is dead. He memorial has been held. He has been buried. The issue is moot." The simple truth is, violations of the spirit, intent, origin and letter of the Constitution have been committed once again under the guise of military necessity and domestic defense; and the Petitioners have personally suffered, and are personally suffering, real and threatened injury therefrom. This case is not moot and the injury continues. Petitioner Lt. Colonel Sullivan has received no response to his petition for redress of grievance to the Congress, and his nephew, Petitioner Specialist Four Sullivan remains with other members of the North Carolina National Guard in Afghanistan and Iraq, hostile theaters where our sons and daughters are dying every day. While Respondent further states in his brief, "...a judgment in this case could no longer provide any relief on plaintiffs' claims", there is no truth in that statement whatsoever, based upon the facts in evidence and this Court's own knowledge of events as they are occurring.

The "mootness" defense becomes even more disingenuous

when one considers the fact that *Doe v. Bush, supra*, was dismissed first by the United States District Court for Massachusetts, and subsequently affirmed with rehearing denied by the United States Court of Appeals for the First Circuit on March 13, 2003, because of ripeness, stating, "For various reasons... . For example, should there be an attack, Congress may take some action immediately. The purported conflict between the branches may disappear." Petitioners filed five days later, on the same day Respondent Bush declared "war", March 18, 2003. Now, because Respondent Bush prematurely has claimed "major combat operations in Iraq have ended", are we supposed to ignore the undeniable fact there have been serious violations of constitutional law. If so, a very bad precedent will have been set, which will undoubtedly be followed by all future "Commanders-in-Chief", some who may not have our best interests in mind.

Therefore, the Petitioners move this Honorable Court rule to defend the United States Constitution from its inevitable destruction and grant Petitioners' Writ of Certiorari which seeks a ruling to reverse the Order by the District Court and the Affirmation of said Order by the Court of Appeals, and remand this case. Or, in the alternative, this matter being in the realm of Article III Original Jurisdiction, Petitioner prays this Honorable Court will decide this matter for the Petitioners, ordering Respondent Hyde expelled from Congress for his blatant disregard of the sanctity of his oath; ordering Respondent Hefley reprimanded by this Court for denying Petitioner his First Amendment rights and violating his oath; ordering Respondent Members of Congress who supported HJR 114, over the objections of the Constitution and in violation of their oath to defend that Constitution, be censured by Congress; ordering Respondent Bargo be reprimanded by this Court for denying Petitioner his First Amendment rights; ordering Congress to produce a declaration of war against Iraq and Afghanistan, or, failing that, ordering the Executive to begin the orderly withdrawal of all armed forces of the United States from the sovereign soil of Iraq and Afghanistan, including Petitioner Specialist Four Sullivan

and all members of the National Guard, all the while holding said Executive accountable for those actions taken in ignorant disregard of its Constitutional authority, and admonishing both the Legislative and Executive branches for having done so; or, failing that, rendering in most very clear language the Power to declare war rests solely with the Congress and shall nevermore be exercised by the Executive without an Amendment to the Constitution authorizing same; clarifying the interpretation of Art. I, Section 2, as it regards the empowerment of the Commander in Chief only at the order of Congress; declaring the War Powers Resolution of 1973, 50 U.S.C.S. 1543(a), to be repugnant to the Constitution and, therefore, void; declaring the National Defense Act of 1916, *supra*, as it has been interpreted regarding the employment of the militias of the several States in a manner contrary to that proscribed in the Constitution, repugnant to the Constitution and, therefore, void, thus reinstating the original intent of the "militia clause"; and reversing the opinion of the Court in the *Selective Draft Law Cases*, *supra*, and in *Cox v. Wood*, *supra*, as regarding the unconstitutional employment of the States' militias, finding it to be repugnant to the Constitution and, therefore, void, thus reinstating the original intent of the "militia clause".

## REASONS FOR GRANTING THE PETITION

The United States Government, represented by the Legislative and the Executive branches, has departed so far from the stated intent, the origin, and the letter of the United States Constitution in the area of War Powers as to call for an exercise of the Court's judicial review authority.

The United States Court of Appeals for the Fourth District has decided an important question of federal constitutional law, that of War Powers, that should be settled by this Court.

The United States District Court for North Carolina, Southern District, and the United States Court of Appeals for the Fourth District have erroneously dismissed Petitioners' Complaints against the United States Government on contrived and unfounded issues of justiciability, thereby having denied said Petitioners their constitutional and civil rights.

## CONCLUSION

The Petition for a writ of certiorari should be granted, the merits of Petitioners' Case should be reviewed by this Court, or, in the alternative, oral arguments should be heard, and the case tried before the Supreme Court of the United States.

Respectfully submitted by:


**Jeffrey S. Sullivan, Petitioner, *Pro Se***
**SP4, US Army**
**D Co, 1/130th Avn Bn**
**North Carolina National Guard**
**c/o 2025 National Guard Drive**
**Morrisville, NC 27560-0506**

**Donald Sullivan, Petitioner, *Pro Se***
**Lt Col, USAFR (Ret)**
**PO Box 3061**
**Wilmington, NC 28406**
**910-617-2559**


Date: December 23, 2003

## APPENDIX A

**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT QF NORTH CAROLINA**
FILED APR 15, 2003
DAVID W. DANIEL, CLERK
U.S. DISTRICT COURT
E. DIST. NO. CAR.

| | |
|---|---|
| LTC DONALD SULLIVAN and<br>SP4 JEFFREY S. SULLIVAN,<br>Plaintiffs,<br><br>V<br><br>UNITED STATES OF AMERICA,<br>HONORABLE GEORGE W. BUSH,<br>HONORABLE JOEL HEFLEY, Chairman,<br>House Committee on Official Conduct,<br>HONORABLE HENRY HYDE, Chairman,<br>House Committee on International Affairs,<br>JOHN BARGO, Chief-of-Staff, House<br>Committee on Official Conduct, and 535<br>John Does,<br>Defendants | **JUDGMENT IN A CIVIL CASE**<br>**CA. #: 7:03-39- F1** |

__ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered a verdict.

X **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that pursuant to the court's order dated April 10, 2003, and the order dated April 15, 2003, the defendant's motion to dismiss this action is ALLOWED, and the plaintffs' motion for preliminary injunction is DENIED as moot. The Clerk of Court is DIRECTED to close this case and remove it from the undersigned's docket.

THE ABOVE JUDGMENT WAS ENTERED TODAY, April 15, 2003, AND A COPY MAILED TO:

Donald Sullivan
~~PO Box 3061~~
Wilmington, NC 28406

Jeffrey S. Sullivan
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P.O. Box 883
Washington, DC 20044

April 15, 2003
Date

DAVID W. DANIEL
~~Eastern~~ District of North Carolina

Wilmington, North Carolina

s/Susan K. Enyart
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:03-CV-39-F(1)

| | | |
|---|---|---|
| LTC DONALD SULLIVAN and SP4 JEFFREY S. SULLIVAN, Plaintiffs, | ) | |
| Vs | ) | MEMORANDUM AND ORDER |
| UNITED STATES OF AMERICA, et al., Defendants | ) | FILED APRIL 15, 2003 DAVID W. DANIEL, CLERK, U.S. DISTRICT COURT, E. DIST. NO. CAR |

The *pro se* plaintiffs initiated this action on March 18, 2003, seeking a temporary restraining order ("TRO") and a preliminary injunction to prevent President George W. Bush from entering into "any hostile action" in Iraq without a formal declaration of war from Congress. Plaintiff LTC Donald Sullivan is a retired Lieutenant Colonel in the United States Air Force and his son, Plaintiff SP4 Jeffrey S. Sullivan, is a member of the North Carolina National Guard. The plaintiffs allege that Jeffrey is under an order of deployment to the theater of hostilities in Iraq.

On March 20, the Government filed a motion to dismiss on grounds that the plaintiffs' claims fail to present a justiciable controversy. During a hearing on March 21, the plaintiffs indicated they no longer seek to enjoin the war, but rather now seek to force Congress to ratify the President's actions by passing a formal declaration of war. By order dated March 26, 2003, the court

denied the plaintiffs' request for a TRO and granted the plaintiffs additional time to respond to the Government's motion to dismiss. The plaintiffs have since done so.

After carefully considering the parties' respective briefs on the motion to dismiss, the court allowed such motion on April 10 and advised that a written memorandum would be forthcoming. This order memorializes the court's reasons for dismissing this action.

First the court finds that Plaintiff LTC Donald Sullivan ("Donald") lacks standing to obtain the relief he seeks. He is neither an active member of the military under deployment orders nor a member of Congress, and the Supreme Court has long dismissed the notion that "citizens standing" may be used to challenge Government actions. *See Schlesinger v. Reservists Comm to Stop the War*, 418 U.S. 208, 220 (1974). In addition, the law is well settled that the doctrine of "taxpayer standing" is inapplicable in cases in which an individual seeks to challenge the President's authority to make war. *See id.: Harrington v. Schlesinger*, 528 F.2d 455, 457-59 (4th Cir. 1975). Finally, when the court finds that Plaintiff Donald Sullivan's status as a parent of an active military member does not provide him with standing to bring this action. Although the court has great empathy for Mr. Sullivan's concerns as a parent, the law is clear that injuries such as those alleged by Mr. Sullivan are not sufficiently "distinct and palpable" to satisfy the injury-in-fact element of standing.

Second, assuming that Plaintiff SPF Jeffrey Sullivan does have standing, the court finds that his action is barred by the political question doctrine.1 the question of if and when to enter into war is a question committed to the sound discretion of the political branches. Although Jeffrey has abandoned his effort to enjoin the war, he still asks this court to step in and order Congress

1. The political question doctrine also would bar Plaintiff LTC Donald Sullivan's claims.

to declare war. That would be an extraordinary step and would exceed far beyond the constitutional restraints of this court. The court is simply not equipped to make the type of non-judicial policy determinations that would be required to grant the relief Jeffrey seeks.

In this end, the court finds that the plaintiffs' only remedy lies with their representatives in Congress. Accordingly, the government's motion to dismiss is ALLOWED, and the plaintiffs' motion for a preliminary injunction is DENIED as moot. The Clerk of Court is DIRECTED to close this case and remove it from the undersigned's desk.

SO ORDERED.

This the 14th day of April, 2003.

s/James C. Fox
Senior United States District Judge

**APPENDIX B**

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 03 - 1611**

DONALD SULLIVAN; JEFFREY S. SULLIVAN

**Plaintiffs - Appellants**

versus

UNITED STATES OF AMERICA; GEORGE W. BUSH; JOEL HEFLEY, Chairman, House Committee on Official Conduct; HENRY HYDE, Chairman, House Committee on International Affairs; JOHN BARGO, Chief-of-Staff, House Committee on Official Conduct; 535 John Does,

**Defendants-Appellees**

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (CA-03-39-7-F)

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Submitted: August 28, 2003 Decided: September 25, 2003.

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Before WIDENER and GREGORY, Circuit Judges, and HAMILTON, Senior District Judge.

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Affirmed by unpublished per curiam opinion.

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Donald Sullivan, Jeffrey S. Sullivan, Appellants, Pro Se. Rudolf A. Renfer, Jr., Assistant United States Attorney, Raleigh, North Carolina; Vincent Garvey, Scott Ramsey McIntosh, Teal Elizabeth Luthy, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D. C., for Apellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Donald Sullivan and Jeffrey S. Sullivan appeal the district court's order dismissing their complaint and denying, as moot, their motion for preliminary injunction. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the District Court. See Sullivan v. United States, No., CA-03-39-7-F (E.D.N.C. Apr. 15, 2003). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

JUDGMENT

FILED: September 25, 2003

UNITED STATES COURT OF APPEALS
FOR THE
FOURTH CIRCUIT

No. 03 - 1611
CA-03-39-7-F

DONALD SULLIVAN; JEFFREY S. SULLIVAN
Plaintiffs - Appellants

versus

UNITED STATES OF AMERICA; GEORGE W. BUSH; JOEL HEFLEY, Chairman, House Committee on Official Conduct; HENRY HYDE, Chairman, House Committee on International Affairs; JOHN BARGO, Chief-of-Staff, House Committee on Official Conduct; 535 John Does,
Defendants-Appellees

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Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington.

In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

## APPENDIX C

### OUR ILLEGAL WAR

**By Congressman Helen Chenoweth**

(Congress must reclaim its authority)

When the order was given for American military personnel to attack Yugoslavia, it was not issued following a declaration of war from Congress. Nor was the order given by a President as a means of repelling a sudden attack on America by a foreign aggressor, or as a measure intended to rescue Americans abroad from unexpected peril. In fact, the order to attack Yugoslavia didn't even follow the pattern set in Korea and Vietnam, in which our nation was committed to protracted foreign wars through unilateral presidential action. On March 23rd (1999), the order to commence hostilities was given to an American general by a Spanish Marxist, NATO Secretary-General Javier Solana.

"I have just directed the Supreme Allied Commander of Europe, General [Wesley] Clark, to initiate air operations in the Federal Republic of Yugoslavia", announce Solana, who insisted that the attack "is intended to support the political aims of the international community". Congress played no role in defining those political aims, which means that the American people, in whose name Congress is empowered to act, were not permitted to play any role in the decision to commit our nation to war.

In the run-up to our war with Yugoslavia, Congress was permitted by its leaders to carry out an impotent charade of debate. On March 11th, the House approved a non-binding resolution endorsing the use of American

troops to enforce a peace agreement between the Yugoslavia regime of Slobodan Milosevic and secessionist leaders in Yugoslavia's Kosovo province. On March 23rd, just hours before Solana issued the order to begin the bombing, the Senate approved a resolution supporting the military campaign. But Clinton administration officials, including the President, had by that time made it clear that while they sought *approval* of the military action from Congress, they did not consider it necessary for Congress to *authorize* the military strike on Yugoslavia.

A few senators seemed to understand the constitutional implications of these actions. Senator Don Nickles (R-OK) pointed out, "If we start a massive bombing campaign, we're going to war." Senator Ted Stevens (R-AK) described the prospect of waging an undeclared aggressive war upon Yugoslavia as "a precedent I don't want to be involved in." Even more pointed were the comments of Senator Pete Domenici (R-NM), "I say shame on the President," declared Domenici, momentarily forgetting that Bill Clinton has repeatedly demonstrated that he is incapable of shame . "If this is such an important matter, why couldn't (the President) trust the United States Senate and United States House and ask us whether we concur?" [Petitioner Note: This same Pete Domenici voted for the resolution which evolved into President Bush's invasion of Iraq in 2003.]

In order to appreciate the depth of the Administration's deception regarding the war over Kosovo, it is necessary to understand that the war was "authorized" by NATO long before the bombing on March 24th (1999). The day after the war began, the *London Telegraph* reported that General Clark, NATO's supreme military commander, "received his activation order for hostilities last October (1998). The order was the official moment when

authority over the forces to be used was transferred to him from the top brass of the member countries supplying them. The supreme commander does *not need new permission* from politicians or diplomats whenever he wishes to change tactics, or increase or scale back operations." (Emphasis added)

At 1:43 P.M. EST on March 24th (1999), with American bombers en route to Yugoslavia and just minutes before the first explosions were reported on the ground in Kosovo, White House spokesman Joe Lockhart explicitly admitted that the power to take our nation into war had been surrendered to a foreign official, namely, the NATO Secretary-General. Lockhart was asked by correspondent Helen Thomas, "Who gives the green light on this now? Is it the President himself, or the Supreme Commander of NATO...?" Lockhart replied, "The Supreme Commander of NATO acts on the authority of the political leaders of the NATO countries, and he has that authority."

In brief, the power to declare war in Kosovo was exercised by NATO Secretary-General Solana; the power to make war was given to NATO's Supreme Commander; the President of the United States played the role of "selling" the war to the public, and Congress was tacitly told that its duty was to rubber-stamp the decision to take our nation into war, and to authorize payment of the resulting expenses.

"No power but Congress can declare war," observed Daniel Webster in 1846, "but what is the value of this constitutional provision, if the President of his own authority may make such military movements as must bring on war?" The Administration's actions in committing our country to enforce, through military action, diplomatic initiatives in Kosovo presented Congress with a *fait*

*accompli*. The only recourse left to Congress was to defund military deployments to which the Administration had previously committed our country, but the political will for that is not evident. Unfortunately, the majority in both houses of Congress have abdicated their responsibility and have acquiesced in the usurpation of their powers. The passivity of the House in allowing Bill Clinton to carry out an illegal war is particularly galling in light of the fact that the same body impeached him last December (1998) for muc less serious crimes.

Under the Constitution, explained Alexander Hamilton, "It is the province and duty of the Executive to preserve to the Nation the blessings of peace. The Legislature alone can interrupt those blessings, by placing the Nation in a state of War." By surrendering to a series of executive usurpations (those of Bill Clinton being the most brazen), Congress has abandoned the separation of powers Principle", in which Congress meekly endorses the decisions of an imperial "commander-in-chief".

Kings had always been involving and impoverishing their people in wars, pretending generally, if not always, that the good of the people was the object", wrote Abraham Lincoln in 1848. The royal war-making prerogative, which permitted one man to commit his country to way, was regarded by our Founding Fathers, "to be the most oppressive of all kindly oppressions", Lincoln explained. For this reason, the statesmen who gathered at the Constitutional Convention of 1787 "resolved to so frame the Constitution that no one man should hold the power of bringing this oppression upon us."

James Madison's notes on the Convention record the care with which the Founders assigned the power to declare war to the legislative branch. This was done, as George

Mason of Virginia noted, for the purpose of "clogging, rather than facilitating, war." At the initiative of Madison and Elbridge Gerry, the original language authorizing Congress to "make" war was changed to the power to "declare" war, thereby (in Madison's words) "leaving to the Executive the power to repel sudden attacks."

In an April 2, 1798, letter to Thomas Jefferson, Madison further elucidated the reasoning behind this careful assignment of powers, "The Constitution supposes, what the History of all [governments] demonstrates, that the [executive] is the branch of power most interested in war, and most prone to it. It has, accordingly, with studied care, vested the question of war in the legislature."

Alexander Hamilton, who favored a strong Executive Branch, observed in the *Federalist*, No. 69: "The President is to be commander-in-chief of the army and navy of the United States. In this respect, his authority would nominally be same with that of the king of Great Britain, *but in substance much inferior to it.*" (Emphasis added) Where the power of the English king "extends to the declaring of war and to the raising and regulating of fleets and armies," Hamilton explained, the authority of the U.S. President "amounts to nothing more than the supreme command and direction of the land and naval forces, as first general and admiral" after the declaration of war has been issued by Congress.

The text of the Constitution itself (Article II, Section 2) specifies, "The President shall be Commander in chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States...." In other words, "Commander in Chief describes a specific and limited role played by the President. Rather than the Congress having a Commander

in Chief before which it must prostate itself, it has in the President an executive it may entrust with delegated war-making authority.

It bears repeating that in the Kosovo War, the role of commander in chief, by the Administration's own admission, has been assigned to NATO's Supreme Commander, who exercises (in Hamilton's words) "the supreme command and direction of the land and naval forces" called into service by Secretary-General Solana. Perhaps, given Mr. Clinton's own history of "loathing" for the military, personal cowardice, and bottomless corruption, it is of benefit to the morale of American servicemen fighting in Yugoslavia to know that it is General Clark who serves as their commander in chief. Nevertheless, this arrangement gravely undermines the constitutional mechanisms designed to protect our liberties and national sovereignty.

In my remarks to the House of Representatives, during the March 11th debate, I reminded my colleagues that nothing in the laws or the Constitution suggests that a determination by the United Nations Security council or by the North Atlantic Council (NATO's governing political body) is a substitute for a congressional declaration of war. Furthermore, by making war on a sovereign nation, NATO acted in violation of both its own charter and that of the United Nations.

The North Atlantic Treaty states that NATO will "refrain in [its] international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations." The document specifies that NATO was created to defend "the territorial integrity, political independence or security" of is members in exercising the right of "collective self-defense recognized by Article 51 of

the Charter of the United Nations." Whatever one thinks of the actions of the Milosevic regime in suppressing a secessionist movement within its own borders, it must be admitted that the Yugoslav regime did nothing to threaten the "integrity, political independence or security" of NATO members. Thus NATO's attack on that regime violated the alliance's founding treaty.

Furthermore, NATO's commitment to act in harmony with "the purposes of the United Nations" requires that the alliance be bound by the United Nations Charter. Article 2, Section 7, of the UN Charter states, "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state", the suppression of Kosovo's ethnic Albanian secessionist movement is clearly within Yugoslavia's domestic jurisdiction.

Under the precedent set in the Kosovo war, America may find itself committed to military intervention in ethnic conflicts around the world. Should we attack Turkey to protect the Kurds, who chafe under Turkish rule? Should we go to war with China in support of independence-minded Tibet? Will U.S. planes attack Sri Lanka in defense of Tamil separatists, or bomb targets in India on behalf of Muslims in Kashmir? The logic of the Kosovo precedent dictates that U.S. troops can be committed to war, without congressional sanction, anywhere in the world where atrocities are captured by the camera lens.

The war on Yugoslavia, we must remember, was brought about by NATO's demand that Milosevic consent to the foreign occupation of his country by an international army, which would enforce the terms of an agreement intended to grant "autonomy" to ethnic Albanian rebels. When Milosevic refused to permit the occupation, NATO

threatened to bomb his country, and ultimately carried out that threat. Once again, the Clinton Administration has been devastatingly candid about key facts. On February 10th, in testimony before the Committee on International Relations, Under Secretary of State for Political Affairs Thomas Pickering confirmed that Kosovo is part of Yugoslavia's sovereign territory, and that an attack upon Yugoslavia waged because of Milosevic's refusal to allow foreign intervention would be nothing less than an act of war.

It is a remarkable spectacle to see the Clinton Administration and NATO taking over from the Soviet Union the role of sponsoring "wars of national liberation". More remarkable still, and even more unsettling, is the fact that the beneficiary in the case of Kosovo, the so-called Kosovo Liberation Army (KLA), is a collection of Maoist drug-peddlers and terrorists who have been armed by Iran and provided with training and support by Saudi terrorist financier Osama bin Ladin, who is the world's most notorious sponsor of international terrorism.

When Bill Clinton, in an earlier crime against the Constitution, unilaterally launched missile strikes on Afghanistan and Sudan, he claimed that his target was the terrorist network operated by bin Ladin. However, in Kosovo, Bill Clinton has committed America's military might to the support of bin Ladin's Balkan allies, and the policy of the Clinton Administration seeks the creation of a Balkan outpost for bin Ladin's terrorist network.

THE NEW AMERICAN was the first national publication in this country to document the KLA's narco-terrorist background ("Diving into the Kosovo Quagmire", March 15th [1999] issue), and I made this magazine's findings available to many of my colleagues on Capitol Hill.

Although few U.S. publications have looked into the KLA's role in international terrorism, the *Times* of London for March 24th [1999], in a story published just before NATO commenced airstrikes upon Yugoslavia, reported that the KLA, in "the judgment of senior police officers across Europe." Is "a Marxist-led force funded by dubious sources, including drug money." Police forces in three Western European countries, together with Europol, "are separately investigating growing evidence that drug money is funding the KLA's leap from obscurity to power," continued the report.

A report filed on the same day by Steve Rodan of the *World Tribune* described how an "autonomous" Kosovo under KLA control could serve as a springboard for Iranian sponsored terrorism throughout Europe and beyond. According to Western European security experts, wrote Rodan, "Iran, Saudi Arabia and some of their terrorist beneficiaries have exploited the fighting to establish a sphere of influence that spans from Greece to the Austrian border." NATO's willingness to go to war on behalf of Muslim ethnic Albanians in Kosovo could ignite insurrections across Europe, to which the KLA's terrorist sponsors would eagerly lend support. "The concern of European strategists is that an Iranian sphere of influence would do greater damage to such Western countries as Britain, France and Germany," reported Rodan. "France has about two million Muslims, most of them poor and alienated. Britain has about 1.5 million." A European diplomat told Rodan, "Once these minorities feel they can obtain the support of NATO, we could see flare-ups everywhere."

We could see "flare-ups" within our own country as well, and the Kosovo precedent would justify military intervention by the "international community" to settle such conflicts within our own borders. Consider the case of the

southwestern United States, a region referred to as "Aztlan", the mythical homeland of the Aztecs, by such militant groups as the "Brown Berets". Aztlan radicals have announced their intention to conduct *la reconquista,* the re-conquest, of that region through unrestrained illegal immigration, as well as subversion and violence. It is not difficult to foresee a future scenario in which the "international community" authorizes the use of military force in support of "autonomy" for Aztlan, in the same way that the war in Yugoslavia was launched in support of "autonomy" for an Albanian Muslim-dominated Kosovo.

Had Congress performed its constitutional duty, all of these facts woud have been rigorously examined before our nation found itself committed to an illegal war in Yugoslavia. We would have demanded that the President make his best case to the peoples' representatives in a formal request for a declaration of war. This would have given us the opportunity to require that he defend an alliance with drug-dealing Marxists bent upon promoting terrorism throughout Europe. Had Congress been willing to exercise a check on presidential ambitions by withholding funds for the envisioned military deployment, we would have learned, in a timely fashion, about the unconstitutional arrangement through which the power to declare war was delegated to a Spanish Marxist, and the power to make war was assigned to NATO's military commander. Had we acted with statesmanlike deliberation, we would have soberly discussed and contemplated the implications of the Kosovo precedent for our nation's future.

It was our duty to do all of this before deciding whether or not to interrupt "the blessings of peace...by placing the Nation in a State of War." Instead, Congress submitted to the usurpations of a corrupt, impeached

President, and made itself complicit in his crimes against our Constitution and our national sovereignty.

Congress can reclaim the powers it has surrendered. Indeed it must, if our descent into tyranny and the erosion of our sovereignty are to be arrested. But this will not happen until a critical mass of public understanding is reached, and informed pressure is brought to bear. The actions of an imperial President can, as Lincoln warned, "bring this oppression upon us"; but only if, through our indifference, we allow those malign designs to flourish.

## APPENDIX D

### Violating the Constitution With an Illegal War
### by Congressman Ron Paul, MD

Delivered to the House of Representatives, October 3, 2003

The last time Congress declared war was on December 11, 1941, against Germany in response to its formal declaration of war against the United States. This was accomplished with wording that took less than one-third of a page, without any nitpicking arguments over precise language, yet is was a clear declaration of who the enemy was and what had to be done. And in three-and-a-half years, this was accomplished. A similar resolve came from the declaration of war against Japan three days earlier. Likewise, a clear-cut victory was achieved against Japan.

Many Americans have been forced into war since that time on numerous occasions, with no congressional declaration of war and with essentially no victories., Today's world political condition is as chaotic as ever. We're still in Korea and we're still fighting the Persian Gulf War that started in 1990.

The process by which we've entered wars over the past 57 years, and the inconclusive results of each war since that time, are obviously related to Congress' abdication of its responsibility regarding war, given to it by Article I, Section 8 of the Constitution.

Congress is about to circumvent the Constitution and avoid the tough decision of whether war should be declared by transferring this monumental decision-making power regarding war to the President. Once again, the process is being abused. Odds are, since a clear-cut decision and commitment by the people through their representatives are not being made, the results will be

as murky as before. We will be required to follow the confusing dictates of the UN, since that is where the ultimate authority to invade Iraq is coming from, rather than from the American people and the U.S. Constitution.

Controversial language is being hotly debated in an effort to satisfy political constituencies and for Congress to avoid responsibility of whether to go to war. So far the proposed resolution never mentions war, only empowering the President to use force at his will to bring about peace. Rather strange language indeed!

A declaration of war limits the presidential powers, narrows the focus, and implies a precise end point to the conflict. A declaration of war makes Congress assume the responsibilities directed by the Constitution for this very important decision, rather than assume that if the major decision is left to the President and a poor result occurs, it will be his fault, not that of Congress. Hiding behind the transfer of the war power to the executive through the War Powers Resolution of 1973 will hardly suffice.

However, the modern way we go to war is even more complex and deceptive. We must also write language that satisfies the UN and all our allies. Congress gladly transfers the legislative prerogatives to declare war to the President, and the legislative and the executive branch both acquiesce in transferring our sovereign rights to the UN, an unelected international government. No wonder the language of the resolution grows in length and incorporates justification for starting this war by citing UN Resolutions.

In order to get more of what we want from the United Nations, we rejoined UNESCO, which Ronald Reagan had bravely gotten us out of, and promised millions of dollars of U. S. taxpayer support to run this international agency started by Sir Julian Huxley. In addition, we read of promises by our administration that

once we control Iraqi oil, it will be available for allies like France and Russia, who have been reluctant to join our efforts.

What a difference from the days when a declaration of war was clean and precise and accomplished by a responsible Congress and an informed people!

A great irony of all this is that the United Nations Charter doesn't permit declaring war, especially against a nation that has been in a state of peace for 12 years. The UN can only declare peace. Remember, it wasn't a war in Korea; it was only a police action to bring about peace. But at least in Korea and Vietnam there was a fighting going on, so it was a bit easier to stretch the language than it is today regarding Iraq. Since Iraq doesn't even have an Air Force or a Navy, is incapable of waging a war, and remains defenseless against the overwhelming powers of the United States and the British, it's difficult to claim that we're going into Iraq to restore peace.

History will eventually show that if we launch this attack, the real victims will be the innocent Iraqi civilians who despise Saddam Hussein and are terrified of the coming bombs that will destroy their cities.

The greatest beneficiaries of the attack may well be Osama Bin Ladin and the al Qaeda. Some in the media have already suggested that the al Qaeda may be encouraging the whole event. Unintended consequences will occur, what will come from this attack is still entirely unknown.

It's a well known fact that the al Qaeda are not allies of Saddam Hussein and despise the secularization and partial westernization of Iraqi culture. They would welcome the chaos that's about to come. This will give them a chance to influence post-Saddam Hussein Iraq. The attack, many believe, will confirm to the Arab world that indeed the Christian West has once again

attacked the Muslim East, providing radical fundamentalists a tremendous boost for recruitment.

An up or down vote on declaring war against Iraq would not pass the Congress, and the President has no intention of asking for it. This is unfortunate, because if the process were carried out in a constitutional fashion, the American people and the U.S. Congress would vote "No" on assuming responsibility for this war.

Transferring authority to wage war, calling it permission to use force to fight for peace in order to satisfy the UN Charter, which replaces the Article I, Section 8 war power provision, is about as close to 1984 "newspeak" that we will ever get in the real world.

Not only is it sad that we have gone so far astray from our Constitution, but it's also dangerous for world peace and threatens our liberties here at home.

## APPENDIX E

### Statement of Senator Mark Dayton

### *On the Senate Giving Up Its Constitutional Responsibility To Declare War*

March 13, 2003

In a few moments, we will vote to consider the nomination of Miguel Estrada to the Second Highest Court. We've spent over 100 hours on the Senate Floor on this nomination. Compare that 100 hours on one judicial appointment with the number of hours we've spent this year discussing and debating a declaration of war before commencing a war. Zero. Not one hour. Not one minute.

With this nation poised on the brink of war. A war which the United States is instigating without direct provocation. Without imminent threat to our national security.

The first war of preemption. We've claimed the right to attack another country because they might become a future threat. The first war in which the United States is perceived in the eyes of the world as the provocateur, as the threat to world peace.

The *Times* of London recently commissioned a poll where they asked who is the greatest threat to world peace. Forty-five percent responded Saddam Hussein and forty-five percent responded President Bush. Another poll in Dublin, Ireland, asked the same question, and 31 percent said Saddam Hussein and 68 percent said George Bush. In the Arab world, most populations are overwhelmingly against a U.S. invasion.

Osama bin Ladin is attempting to exploit those emotions, exhorting his members of al Qaeda and followers to rise up against

the invader, the Crusader. Those sentiments come as a great shock to us. They are unwarranted and undeserved. However, to a few, unfortunately at high levels in this Administration, this doesn't matter. To them it is irrelevant.

18 months ago, the United States had the sympathy and the support of the world. That has been needlessly squandered, and it is not easily regained. At home, our citizens receive color-coded warnings of greater or lesser unspecified threats. They're told to stockpile water, food, plastic sheets, and duct tape...or told nothing at all.

The Secretary of Defense recently said in a hearing: "We are entering what may prove to be the most dangerous security environment the world has ever known." In the midst of this ominous, dangerous, fateful time, the 108th session of the United States Senate devoted no time to debate or discussion [on this war with Iraq].

Over the last three days, we've considered this spectacle of a bill which purports to ban "Partial Birth Abortions", a matter of importance, of great concern to some, but not one that required the attention of the Senate at this moment.

This judge. Another judge. Another judge. Does it appear that we are avoiding something? We are. We are avoiding our Constitutional responsibility, perhaps the most important responsibility placed upon us by the U.S. Constitution, whether or not to declare war.

The Constitution says simply, clearly, emphatically: **Congress shall declare war** (Emphasis added). Only Congress, No one else. Not the President. Not the judiciary. Not the military. Only Congress. 100 Senators and 435 Representatives elected by, and acting for, the people of the U.S.

Last October, a majority of Members of the 107th Congress, a majority in the House and Senate, voted to transfer that authority to the President. Five months before he has made his final decision regarding war or peace, Congress was asked to give him that authority, that the Constitution assigns only to us, and Congress did. The resolution gave the President the authority to use whatever means necessary, including the use of force, against Iraq.

We use such clever euphemisms here, words which disguise the meaning of our intentions. Use whatever means necessary, and oh, by the way, lest you forget, It's OK with us, if you use "force". Not the lives of American men and women. Not their bodies, their blood, their patriotism. Use force, not deadly, ear-splitting, earth-shattering, people-maiming, death-dealing bombs. The most devastating, overwhelming, terrifying, death-dealing "force" the world has ever known. ["Shock and Awe"] Coming from us. The good guys. The protectors. The preservers of world peace.

**THE UNITED STATES OF AMERICA!** (Emphasis added)

What foresight the Founders of this great nation had in not wanting a decision that enormous, that earth-shaping or earth-shattering to be made by one person. Not by this President. Not by any President. Instead this President asked for, and Congress acquiesced to give complete, unrestricted authority, no conditions, no restraints.

"Don't tie my hands", the President said. Don't tie the President's hands. What did the Founders think of that? Thomas Jefferson in 1798 said, "In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution." Bind him down from mischief by the chains of the Constitution. Tie his hands? That is not enough. We should chain him to the Constitution. We in Congress are

supposed to be chained to the Constitution.

We take an oath when sworn in, we promise to "support and defend the Constitution of the U.S. against all enemies, foreign and domestic. Bear true faith and allegiance to that same Constitution." Our oath and allegiance are not to country, or state, or government. We swear allegiance to the Constitution of the United States of America.

Our Founders had other admonitions for us regarding the Constitution. Follow it or change it. Don't evade it or ignore it. George Washington, in his farewell address in 1796 said, "If, in the opinion of the people, the distribution of Constitutional powers be wrong, let it be corrected by Amendment in the way which the Constitution designates. But let there be no change by usurpation; for this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Finally, from another perspective, author Edward Gibbon wrote in the History of the Decline and Fall of the Roman Empire, "The principles of a free Constitution are irrevocably lost, when the legislative power is taken over by the Executive."

In this instance, the legislative power wasn't taken over by the Executive. We gave it away. Here, Mr. President, you decide. Decide. If you're right, we'll try to share the credit. If you are wrong, you take the blame.

I respectfully urge the Majority Leader, and I respectfully urge all of my colleagues, to turn our attention to this fateful decision when we return next week. A decision on whether or not to vote a declaration of war is the one that would be a very difficult vote, one that would be a career-shaping or career-shattering vote. But it would be one that the Constitution requires of us, our fellow

citizens elected of us. And it's one that only we can or must do to vote whether or not to declare war. I would urge the Senate to turn its attention to that matter when it resumes next.

[Unfortunately, "next week" was too late to salvage our Constitution or our dignity. March 13, 2003, the day of the preceding speech to the Senate, was a Thursday. On Sunday, March 16, 2003, Respondent Bush issued his 48-hour ultimatum to King Hussein. On Tuesday, March 18, 2003, Petitioners filed their original complaint and Motion for a Temporary Restraining Order at or about 12:00 noon. At or about 7:00 PM EST that same day, Respondent Bush ordered the bombing of Baghdad. At that moment the United States of America became a terrorist threat to the entire world.]

(2)

No. 03-976

Supreme Court, U.S.
FILED
MAR 15 2004
OFFICE OF THE CLERK

# IN THE
# Supreme Court of the United States

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LTC DONALD SULLIVAN and
SP4 JEFFREY S. SULLIVAN,
Petitioners, Pro Se

V

UNITED STATES OF AMERICA,
HONORABLE GEORGE W. BUSH, President, HONORABLE JOEL HEFLEY, Chairman, House Committee on Official Conduct, HONORABLE HENRY HYDE, Chairman, House Committee on International Affairs, JOHN BARGO, Chief-of-Staff, House Committee on Official Conduct, and 535 John Does,
Respondents

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On Petition for Writ of Certiorari
To The United States Court of Appeals For the Fourth Circuit

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## PETITION FOR REHEARING

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II. The Court should consider and grant this Petition for Rehearing because *Lawrence, et al v. Texas* constitutes an "intervening circumstance[] of...substantial effect" in that the Supreme Court of the United States, by its own decision, placed the constitutions of other nations above the United States Constitution, thereby undermining its authority and its value as a legal document and threatening its very survival, and thus threatening the very survival of the United States of America as a free constitutional republic. .....3

III. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Writ of Certiorari, to wit: Am 16 Jur 2 requires that the partial unconstitutionality of Public Law 107-243, House Joint Resolution 114, Resolution To authorize the use of United States

Armed Forces against Iraq"; 39 Stat. 166, National Defense Act of 1916, as amended in 1933; and 50 USC 1543(a), War Powers Resolution of 1973, render those sections of said laws void and as if they had never been written. .....5

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## Reasons For Granting The Petition For Rehearing

**I. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial ground not previously presented" in the Petition for Writ of Certiorari, to wit: The Survivability of the Constitution of the United States, and thus the United States itself, is in peril due to the actions of the Legislative and Executive branches (and the inaction of the Judicial branch) in this matter before the Court.**

Whereas, the obvious intent of the Petitioners in this matter is to reinstate that which has been lost, the authority of the United States Constitution as the "Supreme Law of the Land", it appears the Supreme Court of the United States would rather have that Constitution left to be "overwhelmed by events and by time" as proposed by Respondent Hyde. Such was the case in 1992 during discussions regarding whether or not to hear *Planned Parenthood v. Casey* (505 U.S. 833, 1992). According to Justice Blackmun, "The obvious reason (was to avoid) the political repercussions of a decision by this court in an election year"; and "The court risks its reputation if it makes such political choices" (Quoting the Associated Press, 3/5/04, "Late Justice's papers shed new light on Roe v. Wade").

Obviously, the evidence presented in the subject petition combined with the evidence available to this Court and the public at large provides a *prima facie* case for the granting of a writ of certiorari in this matter and the subsequent hearing of the case by the Court. The Respondent members of the Legislative and Executive have completely disregarded the tenets of the Constitution in advancing and waging numerous acts of war against foreign nations in the past sixty years, not limited to those presented to the Court in the petition, without exercising the constitutional safeguards provided by our Founders. For the Court

to deny certiorari in this matter places the Court in a position of duplicity and collusion with those who would have the Constitution disregarded. It would appear so, merely because to do otherwise would result in a definite effect on the elections of 2004, an effect most likely detrimental to the campaigns of those parties directly involved in this fraud against the American people and the several States of the Union, the majority of which are Republicans, which Petitioners also claim to be.

Petitioners' own experience has shown the majority of the members of the legal profession are of the opinion the United States Constitution is "no longer applicable", "obsolete", "too open to interpretation", "anachronistic", or "should be completely rewritten". It is certain this lesson was learned while these individuals attended their law schools of choice, most of which are, upon information and belief, funded and directed primarily by enemies of the Constitution, those who would like nothing better than to have an excuse to rewrite it. Rumor has it the new version has already been approved and awaits only the demise, or the scuttling, of the one we already have. Even Jay Leno, whom some have said tongue in cheek is the purest source of real news, has stated in his monologue, "I hear Mr. Bremer and the Iraqis are trying to find a good constitution. I say, why not give them ours. We haven't used it in 200 years!" There is more than an ounce of truth in this comedic comment.

Petitioners, like all other active and retired federal agents including the Court, take an oath to "support and defend the Constitution of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same." This petition is all about the petitioners defending that oath. For the Court to deny petitioners' petition is tantamount to its sanctioning the unlawful acts of those Respondents who violated their oaths and who knowingly have placed our Constitution and our nation in its greatest peril since the War of Northern Aggression in 1861.

**II. The Court should consider and grant this Petition for Rehearing because Lawrence, et al v. Texas constitutes an "intervening circumstance[] of...substantial effect" in that the Supreme Court of the United States, by its own majority decision, placed the constitutions of other nations above the United States Constitution, thereby undermining its authority and its value as a legal document and threatening its very survival, thus threatening the very survival of the United States of America as a free constitutional republic.**

In *Lawrence, et al v. Texas* (000 U.S. 02-102, 2003), the Supreme Court of the United States failed to "support and defend the Constitution of the United States" in its majority ruling by:

1. Usurping the Constitutional power of the Legislature - The Constitution establishes that the elected branches are the only public policy making bodies in the nation. The current Court has shown disdain for the original plan and exerts both its force and will by having become, through judicial fiat, the dominant policy-making branch of government, rather than a branch dedicated to the mere interpretation of the law.

2. Violating the standards of America's national charter- The Declaration of Independence declares our national character having for its basis "the Laws of Nature and of Nature's God". The Court has previously affirmed that the Constitution cannot be properly interpreted apart from the values established in the Declaration of Independence. The ruling in *Lawrence* tears at the fabric of the morality of our nation, a morality based on those very same "Laws of Nature and of Nature's God".

3. Addressing issues beyond the jurisdiction appropriate for the Court - Moral decisions were intended to be made by the people well below the federal level. Witness for this are the Ninth and Tenth Amendments to the Constitution. The Court in the *Lawrence* decision has intruded into areas reserved for the people and the States.

4. Violating the "Fundamental Principle of the Constitution" - In the words of President Washington, "[T]he fundamental principle of our Constitution...enjoins that the will of the majority shall prevail". In *Lawrence*, the Court has forced the will of a small minority upon all the rest of the nation, a minority, historically and traditionally, whose recognition has resulted in the ultimate demise of its civilization.

5. Placing the Constitutions of other nations above the United States Constitution - As stated in the majority opinion,

"To the extent *Bowers* [*v. Hardwick*, 478 U.S. 186, 1986] relied on values we share with a wider civilization, it should be noted that the reasoning and holding in *Bowers* have been rejected elsewhere. The European Court of Human Rights has followed not *Bowers*, but its own decision in *Dudgeon v. United Kingdom* (Eur Ct. HR, Sept 25, 2001); *Modinos v. Cyprus*, 259 Eur. Ct. HR (1993); *Norris v. Ireland*, 142 Eur Ct. HR (1988). Other nations, too, have taken action consistent with an affirmation of the protected right of homosexual adults to engage in intimate, consensual conduct. See 'Brief for Mary Robinson et al'. The right petitioners seek in this case has been accepted as an integral part of

> human freedom in many other countries." (emphasis added)

The attitude of the Court that the United States should abandon its own position in Bowers and the position of our Founders in the "Articles of Incorporation" (Declaration of Independence) and the "Corporate By-Laws" (the Constitution) in deference to the depraved conduct of "other nations", is extremely frightening and bodes doom for any reasonable interpretation of the "Supreme Law of the Land" in the future by this Court. That this Court would so cavalierly subordinate that Constitution which it has sworn a sacred oath "to support and defend against all enemies foreign and domestic, and bear true faith and allegiance to the same" to those of "other nations", is not only an unconscionable act, but is an act of treason and sedition against the United States. It must be recognized as such and dealt with as such. In this matter, above all others, it is obvious to the nations at large that the "Emperor has no clothes", although our own people are having difficulty seeing and admitting it to themselves.

For the Court not to grant this Petition for Rehearing would reinforce the conspiratorial demise of the Constitution. By not demanding the proper allocation of those authorities defined in the Constitution which have been illegally transferred by the Legislative and illegally confiscated by the Executive by processes ignored by the Judicial (witness the attitude of the Court as described in Lawrence coupled with its failure to provide judicial review when it is so obviously required), we allow the Constitution of "We the People" to become a mere hologram of liberty, which must soon be replaced by another, less friendly, internationalist document. This new document will not protect the rights and privileges of the people, but will instead usurp those rights and use them to the people's detriment, providing them then only by license.

**III. The Court should consider and grant this Petition for Rehearing because this Petition puts forth a "substantial**

**ground not previously presented" in the Petition for Writ of Certiorari, to wit: Am Jur 16 2d requires that the partial unconstitutionality of Public Law 107-243, House Joint Resolution 114, Resolution To authorize the use of United States Armed Forces against Iraq"; 39 Stat. 166, National Defense Act of 1916, as amended in 1933; and 50 USC 1543(a), War Powers Resolution of 1973, render those sections of said laws void and as if they had never been written.**

Constitutional Law 16 Am Jur 2d, *Effect of Totally or Partially Unconstitutional Statutes*, Part 1, Total Unconstitutionality, which was not presented to the Court in the petition for writ of certiorari, states as follows:

> "The general rule is that an unconstitutional statute, whether federal or state, though having the form and name of law, is in reality no law, but is wholly void, and ineffective for any purpose, since unconstitutionality dates from the time of its enactment, and not merely from the date of the decision so branding it an unconstitutional law, in legal contemplation is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. No repeal of such an enactment is necessary."

Therefore, it is a violation of federal law for this Court to allow these unconstitutional laws to be allowed to continue as legal authority in the United States as presented in the petition for a writ of certiorari. Certainly the recognition of their unconstitutionality by this court will have far-reaching ramifications, but to do otherwise is to sanction the continued unlawful disregard for the Constitution and to weaken the United States itself. One needs merely to witness the distress and disorder to which the Union has been subjected as the result of the most recent actions by the

Executive under the auspices of these unlawful acts of the legislature to understand the ultimate potential harm to its survivability. The unilateral use of our military forces by the Executive has literally placed the United States in the undesirable role as an imperialistic outlaw state worthy of the trust and friendship of none. Our military might is currently engaged in theaters where it is completely surrounded by avowed enemies of the United States. The slightest miscalculation on the part of our military or political commanders could spell disaster for us all.

Further, the employment of these unconstitutional laws by said Executive has stressed and stretched the military resources of the United States up to and beyond the breaking point. With over sixty per-cent of the total military on assignments in at least one hundred twenty countries at present, including undeclared ongoing wars in at least three theaters simultaneously, the military is overwhelmed. The troops are being deployed as much as three out of four years to foreign assignments away from their families, and not in the defense of their own country. The United States is no longer even in compliance with the unconstitutional "War Powers Act", *supra.* The result: Disenchantment of the services such that retention and recruitment are being seriously harmed, condemning the "volunteer" military and forcing the virtually outlaw government of the United States to reinstate the draft. Ultimately, the result will be a nation totally devoted to arming and staffing its military because we will have caused the entire world to justly resent and despise us. We cannot survive this trauma, but we can place the blame directly upon the Legislative and Executive branches' (in the persons of the Respondents) utter disregard and ignorance of the spirit, the intent and the letter of the Constitution.

## Conclusion

For the reasons stated above, the petition for rehearing must be granted. It is imperative this Court take aggressive steps to reinstate the authority of the Constitution of the United States over

the entity which it created, the United States of America. As illustrated in the statements above, the "United States" of the Constitution does not exist in fact, based upon the acts and doctrines as defined by the Legislative, the Executive, and the Judicial branches of government. What remains is merely an evil shadow of what was initiated. Unless this Court acts to save it, our Constitution must go asunder. It is now as it was then:

> "Governments are instituted among Men, deriving their just powers from the consent of the governed, - -That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness." (Declaration of Independence, 1776)

It is within the power of this Court to re-establish that Government laid on the foundations of principle and organization which seemed right in 1787 and seems just as right today. Failure to do this will result in this once great nation being subdued by her enemies and relegated to history, unless the People are prepared to exercise that authority described by Thomas Jefferson in the Declaration above. Unfortunately, the People are like sheep and will more likely react in the manner this same Mr. Jefferson described in his comments to the Virginia Legislature in 1784, just one year after the War for Independence had been won:

> "Our rulers will become corrupt, our People careless. The time for fixing every essential right on a legal basis is while our rulers are honest and ourselves united. From the conclusion of this war, we shall be going downhill. It will not then be necessary to resort every moment to the People for support. They will be forgotten, therefore, and their

> rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which will not be knocked off at the conclusion of the war, will remain on as long, will be made heavier and heavier, 'til our rights shall revive or expire in a convulsion."

Regardless which path we may take, the opportunity is before this Court to move this nation in the proper direction back to constitutional authority and responsible government as dictated by the Founders. By this Court's failure to do so, that wrongdoing will affect no one man or woman, yet it will affect all men and women. If left unheeded it will not be without effect on our children yet unborn. The codes and traditions of the Declaration of Independence and the Constitution are the pillars of our people, and these pillars may not be struck with impunity. Though they be strong and a single blow will not damage them mortally, many blows will bring down even the strongest pillar. A single blow left unheeded encourages another. A deed disregarded is a deed encouraged. The petitioners pray this Honorable Court will not disregard and encourage these deeds committed by the Respondents by further inaction. To do so can only be at the great peril of us all. The Court must settle once and for all time these questions of law by granting this petition for rehearing, so these unconstitutional actions shall never more be allowed to threaten our Constitution and the great constitutional republic for which it stands, one nation, under God.

## CERTIFICATE

I do certify, pursuant to Supreme Court Rule 44.2, that this petition for rehearing is restricted to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented, and that it is presented in good faith and not for delay.

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